

In the Matter of Merchant Mariner's Document No. Z-167066-D4 and all other Seaman Documents

Issued to: FERNANDO MARTINEZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1125

FERNANDO MARTINEZ

This appeal had been taken in accordance with Title 46 United States Code 239(g) and Title 46 code of Federal Regulations 137.11-1.

By order dated 30 January 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as a wiper on the United States SS SANTA INES under authority of the document above described, on 29 December 1958, appellant failed to join the ship upon her departure from Barranquilla, Colombia; and on 7 January 1959, he failed to join the ship at Buenaventura, Colombia.

Since Appellant did not appear at the hearing as directed, the Examiner entered pleas of not guilty to the charge and specifications on behalf of Appellant. The allegations contained in the specifications were found proved by the Examiner on the basis of properly made entries in the Official Logbook, introduced in evidence by the Investigating Officer, which showed that after the first failure to join, Appellant rejoined the ship at a port in Colombia and then again failed to join at a third port. The Examiner then rendered the decision in which he entered an order suspending all documents, issued to Appellant, for a period of twelve months. This includes and eight months' suspension which was imposed in May 1958 on twelve months' probation.

Appellant's prior record includes offenses of failure to join five other ships. Three of these offenses were found proved within a year and a half before the two offenses of this nature, now under consideration, occurred.

The only issues raised on appeal are that the order is excessive and Appellant is a sick man. The latter contention cannot prevail because it is not relevant and the former is without merit due to Appellant's record. Actually, appellant is receiving only an additional outright suspension of four months in addition to the eight months' suspension for violation of the probation imposed in May 1958. Appellant's record indicates that he has a strong propensity to disregard his obligation under Shipping Articles to complete a voyage for which he has contracted to perform certain duties. Therefore, the order is considered to be

lenient rather than excessive as is contended on appeal.

ORDER

The order of the Examiner dated at New York, New York, on 30 January 1959, is ~~REVERSED~~ **AFFIRMED**.

J.A. Hirshfield
Rear Admiral, United State Coast Guard
Acting Commandant

Dated at Washington D.C., this 25th day of November, 1959.